that the policy, as alleged by them only provided coverage for plaintiffs and not any other sub-contractors and that the deceased was not the employee of the plaintiffs but the employee of another contractor.

The plaintiffs filed the writ but the defendants had failed to enter appearance. The explanation given was that the Executive Officer of the defendants' company failed immediately to pass over or refer the writ to the defendants' Claim Director, due to pressure of work and the writ was enclosed in a wrong claim file.

The explanation advanced by the defendants did not at all appear to be satisfactory because the officers concerned being experienced in this field dealing with claims and litigations could not be expected to make such a mistake and furthermore even if the writ was enclosed in a wrong file, an appearance should have been entered in another suit. This was not shown to be the case. Any way the requirement to enable the court to set aside the default judgment is that the defendants must show a *prima facie* evidence. I was not satisfied that they had succeeded in doing so. They had failed to establish that they were not liable under the policy. Paragraphs 10 and 11 of the defendants' Claim Director's amended affidavit dated December 3, 1975 merely stated that the defendants had a good defence and that they had repudiated liability. Paragraph 12 of the same affidavit alleged that there were issues of law involved. But nowhere was it adduced as to how the defendants had a good defence in fact as well as in law. I am of the opinion that a mere assertion that they had a good defence and nothing more is not sufficient to establish a *prima facie* defence. The policy was not exhibited to show as to how or under which provision or clause that the defendants were not liable. The other amended affidavit filed on behalf of the defendants also dated December 3, 1975 sworn by the defendants' Executive Officer centred on the oversight in not filing the appearance and about their earlier denial of liability. The Claims Director's affidavit even alleged that one of the reasons for not entering an appearance was that they had not received any instructions from their solicitors and admitted that the defendants had previously been in correspondence with the plaintiffs in respect of the claim which was all the more reason why they should not have overlooked the plaintiffs' writ.

In *Tee Liam Toh* v. *National Employer's Mutual General Insurance Association Ltd.*[3] it was held that once the employer's liability had been established by a competent tribunal namely the President of the Sessions Court as arbitrator the insurance company were precluded from raising the same questions again. In that case, the issue as to whether the employer was entitled to be indemnified by the insurance company was further referred to arbitration and two of the five matters in difference were —

"(c) whether the said workman was covered by the policy No. F 54707;

(d) whether the first party has committed a breach of condition 2 of the policy of insurance."

Ong J., as he then was, held that the only matter in difference which really fell to be decided by the arbitrator was whether or not the applicant as the insured was in breach of any of the conditions of the policy particularly condition 2 which would disentitle him to the indemnity under the policy and the award by the President, Sessions Court was held to be an estoppel. The learned judge also quoted in that case Mellish L.J., in *Parker* v. *Lewis*[4] which, I think, is useful to reproduce:

"I think that the law with reference to express contracts of indemnity is, that if a person has agreed to indemnify another against a particular claim or a particular demand, and an action is brought on that demand, he may then give notice to the person who has agreed to indemnify him to come in and defend the action, and if he does not come in, and refuses to come in, he may then compromise at once on the best terms he can, and then bring an action on the contract of indemnity. On the other hand, if he does not choose to trust the other person with the defence to the action, he may, if he pleases, go on and defend it, and then, if the verdict is obtained against him, and judgment signed upon it, I agree that at law that judgment, in the case of express contract of indemnity, is conclusive."

In the application before me the President had held the deceased was an employee of the plaintiffs and the defendants had chosen to ignore the cases in the Labour Office and in the Sessions Court and in this appeal there was nothing to show that the plaintiffs were not entitled to be indemnified except the bare denial of liability which I held was not sufficient to establish evidence for a *prima facie* defence.

I therefore dismissed the application with costs.

Application dismissed.

Solicitors: *Dulip Singh & Co.; Shearn Delamore & Co.*

KENTUCKY FRIED CHICKEN (M) SDN. BHD. v. LEMBAGA BANDARAN, PETALING JAYA

[A.Cr.J. (Harun J.) December 16, 1975]

[Kuala Lumpur — Selangor Criminal Application No. 27 of 1975]

Criminal Law and Procedure — Appeal — Notice of — Whether filed out of time — Question of when does period for Notice of Appeal run — Criminal Procedure Code (F.M.S. Cap 6), ss. 307(i), 310 — Interpretation Act, 1967, s. 54 — Interpretation and General Clauses Ordinance, 1948.

The applicants were convicted and sentenced under the Petaling Jaya Town Area By-Laws, 1957 by the learned magistrate on September 11, 1975. Being dissatisfied with the decision of the learned magistrate, the applicants filed a Notice of Appeal on September 11, 1975 and on September 23, 1975, the learned magistrate by letter returned the Notice of Appeal to the applicants on the ground "that the Notice is filed out of time". The learned magistrate ruled that the ten-day period under section 307(i) Criminal Procedure Code ran from September 11, 1975 and the last date was September 21, 1975. The applicants argued that the date ran from September 12, 1975 and the last date was September 22, 1975

The applicants applied under section 310 of the Criminal Procedure Code to determine whether the Notice of Appeal was filed within the prescribed time or alternatively for extension of time within which to file the Notice of Appeal.

Held: as the sentence was passed on September 11, that day should be excluded and the period for the Notice of Appeal ran from September 12. In this case the applicants had filed their Notice of Appeal within the prescribed time.

CRIMINAL APPLICATION.

Lawrence Tan Hui Seng for the applicants.

Ee Chin Seng (Deputy Public Prosecutor) for the respondents.

Harun J.: This is an application under section 310 of the Criminal Procedure Code to determine that a Notice of Appeal was filed within the prescribed time or alternatively for extension of time within which to file the Notice of Appeal. The facts briefly are as follows:

The applicants were convicted and sentenced under the Petaling Jaya Town By-Laws, 1956 by the learned magistrate, Petaling Jaya on September 11, 1975. Being dissatisfied with the decision of the learned magistrate, the applicants filed a Notice of Appeal on September 22, 1975 at the said Magistrate's Court. On September 23, 1975, the learned magistrate by letter returned the Notice of Appeal to the applicants on the ground "that the notice is filed out of time"

Section 307(i) of the Criminal Procedure Code provides, *inter alia*, that a Notice of Appeal to the High Court must be lodged with the Magistrate's Court "within ten days from the time of ... judgment, sentence or order being passed or made." The questions are, (i) from which date does the 10 day period run and (ii) on which date is the last day for filing the Notice of Appeal. The learned magistrate says the period runs from September 11 and the last date was September 21. The applicants, on the other hand, say that the date runs from September 12 and the last date was September 22.

For purposes of computing time under any written law one has to look at the Interpretation Act, 1967 or the Interpretation & General Clauses Ordinance, 1948. The Criminal Procedure Code (F.M.S. Cap. 6) was revised under the Revision of Laws Act, 1968 and therefore by virtue of section 2(1)(b) of the Interpretation Act, 1967 the latter Act applies to the Criminal Procedure Code. Section 54 of the Interpretation Act reads:

"(1) In computing time for the purposes of any written law —

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b) if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day;"

It follows that in this case as the sentence was passed on September 11, that day is excluded and the period for the Notice of Appeal runs from September 12 — (section 54(1)(a)). As the tenth day falls on September 21 which is a Sunday and a weekly holiday in Petaling Jaya, the last day on which to file the Notice of Appeal is on Monday September 22 — (section 54(1(b)). I accordingly hold that the applicants have filed their Notice of Appeal within the prescribed time.

This application was not made until December 3, 1975, more than 10 weeks after the learned magistrate had rejected the Notice of Appeal. There is no explanation for the delay in the affidavit in support of this motion. Nonetheless, as the applicants were in the first instance in time in filing their Notice of Appeal and these proceedings were only necessitated because of the error of law by the learned magistrate in rejecting their Notice of Appeal, I would grant this application. In future, however, persons who are aggrieved by any order of a Subordinate Court should seek the aid of the High Court with all convenient speed as is appropriate in each case.

There will be an order that the Notice of Appeal filed by the applicants on September 22, 1975 in the Magistrate's Court, Petaling Jaya and returned to the applicants be now accepted by that court as having been filed in time.

Order accordingly.

Solicitors: *Lawrence Tan & S. Y. Chew.*

ONG SEE KE v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim Yeop A. Sani) March 2, 1976]
[Ipoh — Perak Criminal Appeal No. 96 of 1975]

Fisheries — Operating trawl net for fishing — Forfeiture of vessel — Fisheries (Maritime) (Amendment) Regulations, 1972, paragraph 2(i)(b) — Fisheries Act, 1963, ss. 15(1).

In this case the appellant was one of three accused who had pleaded guilty to the charge of operating a trawl net used with an engined boat of 120 horse power. The boat which belonged to the appellant was authorised for trawler fishing beyond 7 miles from the coast but the boat was found used for fishing in waters 5.2 miles off the coast. The appellant was fined $200 and the exhibits including the boat and net were forfeited. The appellant appealed against the order of forfeiture.

Held, dismissing the appeal; (1) it was clear that as far as trawl nets are concerned the use of engined boats was concomitant with their operation and therefore the boat was a "thing" used in the commission of the offence within the terms of paragraph (b) of section 15(1) of the Fisheries Act and was rightly forfeited;

(2) the fishing licence and boat licence were not however instruments or appliances and should not have been forfeited.

Cases referred to:-

(1) *Juk-De Sa* v. *Public Prosecutor* [1975] 1 M.L.J. 283.

(2) *Public Prosecutor* v. *Lee Chin Chai* [1974] 1 M.L.J. 205; [1974] 2 M.L.J. 174.

CRIMINAL APPEAL.

U. Harcharan Singh for the appellant.

Wan Abdul Majid bin Wan Hamid (Deputy Public Prosecutor) for the respondent.

Hashim Yeop A. Sani J.: The appellant was one of the three accused persons who pleaded guilty in the Magistrate's Court, Parit Buntar, on July 28, 1975 to a charge of operating trawl net used with an engined boat of 120 horse power and 16.5 tons No. PKFA 1601 in waters 5.2 miles off the coast of Kuala Kurau, Perak, in contravention of the provisions of paragraph 2(i)(b) of the Fifth Schedule to the Fisheries (Maritime) (Amendment) Regulations, 1972. The facts of the case which were admitted by all the accused were that on July 8, 1974 at about 2.30 p.m. a marine police crew while patrolling the maritime waters off Kuala Kurau saw a trawler and on board were the three accused who were then fishing with a trawl net. The marine corporal then took the bearing in order to determine the position of the boat from the nearest coast. As a result of the bearing taken it was found that the distance was 5.2 miles from the nearest coast. The marine corporal checked the licence of the fishing vessel. The licence (exhibit P2) disclosed that the boat was of type AEC 120 h.p. and of gross tonnage